

REMARKS:

The April 12, 2004, Office Action has been carefully considered. In reply thereto, the following remarks are being submitted for entry in the record and consideration by the Examiner.

Summary of the Second Office Action

In the Office Action, pending claims 4 and 5 are indicated as being allowed; pending claims 1-3, 6, 7, and 9 have been rejected under 35 U.S.C. § 102(b), 103(a) and 112, second paragraph; and pending claims 8 and 10 have been objected to. The specification has been objected to. The drawings filed February 24, 2004, have been approved but objected to because they were submitted to the Patent Office by facsimile. The following remarks are directed to claims 1-10 and the drawings.

Objections to the Drawings

In the Office Action, the Examiner indicated that the drawings submitted on February 24, 2004, has been approved. However, the corrected drawings have been objected to because they were submitted to the Patent Office by facsimile transmission, rendering them unacceptable for use as formal drawings.

Enclosed with this paper is a hardcopy of the original February 24, 2004, Transmittal of Corrected Formal Drawings and the corrected drawings previously submitted. Please enter the corrected drawings in the record. Reconsideration and withdrawal of the objection of the drawings are respectfully requested.

Objections to the Specification

The Examiner has objected to the specification for two reasons. First, the Examiner has objected to the first sentence of the specification, which was added by instruction in Applicant's January 15, 2002, Utility Patent Application Transmittal form (see Box 19 of the form). In accordance with the Examiner's recommendation, Applicant has provided an instruction with this paper to delete the first sentence of the specification and replace it with a new sentence. That sentence, which was originally submitted with Applicant's February 24,

2004, Reply and Amendment, claims priority to Applicant's earlier filed applications: "This application is a division of U.S. Application No. 09/405,339, filed September 24, 1999, Patent No. 6,355,123, which is a continuation-in-part of U.S. Application No. 09/110,632, filed July 6, 1998, Patent No. 6,113,141." It is believed that this replacement is proper and that the priority claim to earlier applications made in the replacement sentence is in accordance with 37 C.F.R. §1.78.

Second, the Examiner has objected to the previously-submitted amendments to the specification because they were not marked up showing the changes being made. Applicant is re-submitting the amendments to the specification that were originally filed with the February 24, 2004, Reply and Amendment. However, the amendments to the specification submitted with this paper include the marked up paragraphs in accordance with 37 C.F.R. §1.121.

Accordingly, reconsideration and withdrawal of the objections of the specification are respectfully requested.

Objections to Claims 1, 3-5, and 8 (Informalities)

The Examiner has raised several objections to claims 1, 3-5, and 8 and requires appropriate correction. As noted in the Listing of Claim included with this paper, Applicant has made the appropriate corrections. Reconsideration and withdrawal of the objections of those claims are respectfully requested.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 2 and 3 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner contends that the recitation "wherein said first and second fabric panels are made from one or more materials that are impermeable" is inaccurate in view of the specification which states that the panels are treated (i.e., coated) with an impermeable material (citing page 7, line 19 to page 18, line 1).

It appears that the Examiner's rejection is a rejection under 35 U.S.C. § 112, first paragraph, which requires, among other things, a written description of the invention. If that is the case, Applicant requests that the finality of the present Office Action be withdrawn and

the Examiner issue a new Office Action citing 35 U.S.C. § 112, first paragraph, as the basis for rejecting claims 2 and 3. To the extent that Applicant's request is denied or that it has misinterpreted the Examiner's rejection, Applicant has addressed the above rejection in the alternative, as if it were based on 35 U.S.C. § 112, second paragraph and on 35 U.S.C. § 112, second paragraph.

With regard to the indefinite argument, Applicant respectfully disagrees with the Examiner's contention that claims 2 and 3 are indefinite. The requirement to "distinctly" claim subject matter means that the claim must have "a meaning discernible to one of ordinary skill in the art when construed according to correct principles." Metabolite Labs. Inc. v. Laboratory Corp. of Am. Holdings, 71 USPQ 2d 1081, 1089 (Fed. Cir. 2004) (citing cases). "Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite." Id. (citing Exxon Research & Eng'g Co. v. United States, 60 USPQ 2d 1272] (Fed. Cir. 2001)).

In this case, the Examiner has not demonstrated that one of ordinary skill in the art would not be able to discern the meaning of the phrase "wherein said first and second fabric panels are made from one or more materials that are impermeable." The fact is, each of the terms in that phrase has an ordinary or customary meaning in the art that is readily discernible, and thus the claim language is amenable to construction by a court. The specification does not provide alternative definitions that would cloud the meaning of the terms or render any of the claim terms ambiguous. In fact, the specification clearly states that "other materials could be utilized so long as the result is an inflation fluid impermeable material," which by itself does not provide an alternative meaning for the claim terms that would render the claims indefinite. Thus, the recitation in claims 2 and 3 of "made from one or more materials that are impermeable" is not indefinite. Reconsideration and withdrawal of the 35 U.S.C. § 112, second paragraph, rejection of claims 2 and 3 are respectfully requested.

With regard to the written description requirement, Applicant submits that it was in possession of the invention recited in claims 2 and 3 at the time of filing the present application. 35 U.S.C. § 112, first paragraph, requires that sufficient information be included in the original disclosure to show, from the viewpoint of one of skill in the art, that the inventor possessed the invention at the time of the original filing. See Metabolite, 71 USPQ 2d at 1090 (citing cases).

As noted above, the specification states that “other materials could be utilized so long as the result is an inflation fluid impermeable material.” The Examiner contends that this disclosure means that the fabric material that the panels are made from is not impermeable; instead, the fabric panels are treated (i.e., coated) with an impermeable material. Applicant respectfully submits that a person of ordinary skill in the art would understand that the claim language “wherein said first and second fabric panels are made from one or more materials that are impermeable” is adequately described in the written description. The term “materials” is used in the written description to refer to the fabric of the panels, on the one hand, and to refer to substances used to treat the panels, on the other hand. Thus, the term “materials” can describe the fabric that the panels are made from, and it can describe a substance used to treat or coat the panels.

Rejection - 35 U.S.C. § 102(b)

Claim 1 has been rejected under 35 U.S.C. § 102(b) as being anticipated by EP 0485599 to *Kokaguchi et al.* For the reasons noted below, Applicant respectfully traverses the § 102(b) rejection of claim 1.

The Examiner contends that the invention disclosed in *Kokaguchi et al.* is a “roll-over” airbag “because it is capable of providing at least some degree of protection during a roll-over.” As pointed out in Applicant’s earlier response, the Examiner does not provide any factual support for this contention or rely on official notice that the assertion is true.

One of ordinary skill in the art would understand that the airbag described in *Kokaguchi et al.* is only deployed in response to a frontal impact. Upon initiation, a front impact airbag is fully inflated and then immediately deflates, with the entire inflation/deflation cycle taking less than about 30 milliseconds (as noted in U.S. Patent No. 6,673,728). Even assuming that the roll-over event was preceded by a frontal impact, the airbag device in *Kokaguchi et al.* would have already deflated by the time the vehicle was even partially inverted. In roll-over events not preceded by frontal impact, the frontal airbag does not deploy at all unless there is a frontal impact at some point between the time the vehicle is inverted and the time it finally comes to rest. Accordingly, the airbag device in *Kokaguchi et al.* is not adapted for “self-inflating between a vehicle occupant and a side or top structure of the vehicle,” as recited in amended claim 1. The airbag device of *Kokaguchi*

is only adapted for self-inflating between a vehicle occupant and a front structure of the vehicle. Accordingly, reconsideration and withdrawal of the § 102(b) rejection are respectfully requested.

Rejection - 35 U.S.C. § 103(a)

Claims 2, 3 and 6 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kokaguchi et al.* in view of DE 2552815 to *Ronn et al.* and JP 06016099 to *Takahashi et al.* Claims 7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kokaguchi et al.* in view of *Ronn et al.*, *Takahashi et al.* and JP 05016751 to *Toru*. For the reason noted below, Applicant respectfully traverses the Examiner's § 103(a) rejection of claims 2, 3, 6, 7, and 9.

None of the cited references disclose or teach all of the combination of features recited in claim 1, including "wherein said roll-over airbag is adapted for self-inflating between a vehicle occupant and a side or top structure of the vehicle." Thus, claim 1 is not obvious in view of the cited references. Since claim 2 depends from claim 1, Applicant submits that claim 2 is also not obvious.

None of the cited references disclose or teach all of the combination of features recited in claim 3, including "wherein said roll-over airbag is adapted for self-inflating between a vehicle occupant and a side or top structure of the vehicle." Thus, claim 3, like claim 1, is not obvious in view of the cited references. Since claim 6, 7 and 9 depends from claim 3, Applicant submits that those claims are also not obvious. Reconsideration and withdrawal of the § 103(a) rejection are respectfully requested.

Allowable Claims 4, 5, 8 and 10

In the Office Action, the Examiner has allowed claims 4 and 5. The Examiner has indicated that claims 8 and 10 would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims.